

STATE OF MICHIGAN  
IN THE SUPREME COURT

**ROBERT THOMAS CROUCHMAN**  
and **SUSAN M. CROUCHMAN**, his wife,

Plaintiffs,  
v.

Supreme Court No. 127871

**MOTOR CITY ELECTRIC COMPANY**,  
a Michigan Corporation, and  
**CITIZENS INSURANCE COMPANY OF**  
**AMERICA**, a Michigan corporation,

Court of Appeals No. 248419

Trial Court No. 01-112063-NI

Defendants,  
and

**KEVIN JAMES WIECZOREK**,

Defendant and Third-Party Plaintiff-Appellee  
v.

**AUTO-OWNERS INSURANCE COMPANY**,  
correctly identified as **HOME-OWNERS**  
**INSURANCE COMPANY**,

Third-Party Defendant-Appellant.

**THIRD-PARTY DEFENDANT/APPELLANT AUTO-OWNERS INSURANCE  
COMPANY'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE  
TO APPEAL**

Respectfully submitted,

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**TABLE OF CONTENTS**

SUPPLEMENTAL ARGUMENT ..... 1

## SUPPLEMENTAL ARGUMENT

Consistent with this Court's September 29, 2005 order, third-party defendant/appellant Auto-Owners Insurance Company, correctly designated as Home-Owners Insurance Company ("appellant"), files this supplemental brief only to clarify that third-party plaintiff/appellee Kevin James Wieczorek ("Wieczorek") has repeatedly admitted that the non-owned vehicle at issue in this case was regularly furnished for his use by his employer. Appellant has adequately briefed the legal issues and now seeks only to eliminate any question regarding the status of the vehicle as a regularly furnished vehicle. Throughout the litigation it has been admitted by Wieczorek that it was a vehicle furnished for regular use.

First, during the original hearing on appellant's motion for summary disposition before the trial court, Counsel for Wieczorek stated that:

"[I]t's certainly agreed that there is no dispute as to the underlying facts. **This vehicle was a company car provided to Mr. Wieczorek by Motor City and it was provided for his regular use. He drove it to and from work and in the business every day and that's what he was doing on the day of the accident.** So, we have no factual dispute". [Exhibit A, Excerpt from Hearing Transcript, 1/3/03, p 6, Emphasis added].

Second, in his Appellee's Brief before the Court of Appeals, Wieczorek admitted that he was "using an automobile which he did not own, but was furnished to him by his employer, Motor City Electric." (Exhibit B, Excerpt from Court of Appeals Appellee's Brief, p 5. The Court of Appeals recognized Wieczorek's admission in its opinion, *Crouchman v Motor City Electric Co, et al*, unpublished opinion per curiam of the Court of Appeals, decided October 28, 2004 (Docket No. 248419), p 3:

“[T]here is also no dispute that Wieczorek is the first-named insured, who was driving a private passenger automobile, for purposes of this provision. **Nor is it disputed that the vehicle in question was owned by Motor City Electric, that it was regularly made available to Wieczorek, and that Wieczorek was driving it within the scope of his employment with Motor City**”. (Emphasis added.)

Lastly, in his Brief in Opposition to appellant’s Application for Leave to Appeal in this case, Wieczorek again admitted that the “Ford Excursion, owned by his employer, was regularly available for Mr. Wieczorek’s use.” (Brief in Opposition, p 4). As a result, there can be no dispute that Wieczorek was driving a vehicle that was regularly furnished for his use.

In light of these undisputed facts, the liability was not covered under the Auto-Owners policy because the vehicle was furnished for regular use by Appellee Wieczorek; Appellant relies on the briefs already submitted to this Court and will not repeat the legal authorities.

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.

Dated: October 26, 2005

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